

*Oak Brook Development Company* 3-2

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Application

of

OAK BROOK DEVELOPMENT COMPANY

(Formerly Butler Overseas  
Corporation)

for revision or refund of franchise  
tax under Article 9A of the Tax Law  
for the calendar year 1962.

Oak Brook Development Company (formerly Butler Overseas Corporation), the taxpayer herein, having filed application for revision or refund of franchise tax under Article 9A of the Tax Law for the calendar year 1962, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on October 20, 1965, before William F. Sullivan, Senior Tax Administrative Supervisor of the Corporation Tax Bureau of the Department of Taxation and Finance, at which hearing John T. Anderson, assistant secretary of the taxpayer, appeared personally and testified, together with Edward E. Kable, Esq., of Counsel, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) That the taxpayer was incorporated in Illinois on November 20, 1951 and became subject to the franchise tax imposed by Article 9A of the Tax Law in 1961;

(2) That the taxpayer filed its franchise tax report for the calendar year 1962 on June 19, 1963, and computed and paid the following tax:

Entire Net Income	\$99,298.10
Business Allocation	44.2926%
New York Base	43,981.71
Tax at 5½%	\$ 2,418.99

(3) That on October 23, 1963 the taxpayer filed a timely application for revision or refund;

(4) That the taxpayer was engaged in the wholesale paper business in New York City under the name of Butler Overseas Corporation; that on December 29, 1961 it merged Ginger Basin Company, an Illinois company engaged in the real estate development business in Illinois; that after the merger the name was changed to Oak Brook Development Company;

(5) That attached to the application for revision or refund is a schedule showing allocation of income and deductions between the "Paper Division" and the "Land Division"; that the schedule shows a net loss (before net operating loss deduction) of (\$45,424.06) for the "Paper Division" operations in New York, and a profit of \$177,605.90 for the "Land Division" operations in Illinois;

(6) That each division operated independently of each other; separate bank accounts and books of account were maintained; each division had its own employees;

(7) That Section 210.8 of the Tax Law reads, in part, as follows:

"If it shall appear to the tax commission that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the tax commission shall be authorized in its discretion, in the case of a business allocation percentage, to adjust it by (a) \* \* \*, (b) \* \* \*, (c) \* \* \*, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state \* \* \* ."

Upon the foregoing findings and upon all the evidence presented, it is hereby

DETERMINED:

(A) That to effect a fair and proper allocation of income and capital attributable to the taxpayer's operations in New York State, a separate accounting basis is permitted;

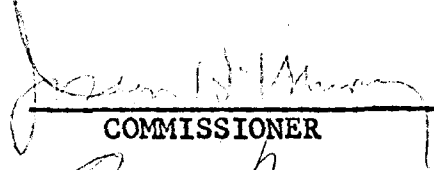
(B) That the tax for the calendar year 1962 is resettled in the minimum amount of \$25.00.

(C) That the resettled tax does not include taxes or other charges which are not legally due.


Dated: Albany, New York

this 8th day of April 1969.

THE STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

TO: State Tax Commission

RE: OAK BROOK DEVELOPMENT COMPANY

This is one of the pending cases turned over to my office for review, received from the Law Bureau under date of March 25, 1969.

Mr. Nigel Wright, Hearing Officer, has reviewed the determination prepared by the Corporation Tax Bureau and is in agreement with it.

If it meets with your approval, please sign three copies of the determination and return the file to my office for final processing.

/s/

EDWARD ROOK

---

Secretary to the  
State Tax Commission

March 27, 1969

cc Mr. Wright

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Best  
FROM: Mr. Doran  
SUBJECT: Oak Brook Development Company

DATE November 26, 1965

OFFICE Corporation Tax

RECEIVED  
NOV 26 1965  
LIT 10204

Attached is proposed determination in the matter of application for revision for the calendar year 1962 under Article 9-A of the Tax Law.

If you concur, will you forward to the Commission for approval.

E. A. Doran  
E. A. DORAN

Attachment

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Doran

DATE November 15, 1965

FROM: Mr. Sullivan

OFFICE

SUBJECT: Oak Brook Development Company (formerly  
Butler Overseas Corporation)

A formal hearing was held on October 20, 1965 on the application filed by the above corporation for revision or refund of franchise tax under Article 9A for the calendar year 1962.

The tax was assessed as follows:

Entire Net Income	\$132,181.84
Business allocation	44.2926%
New York base	58,546.77
Tax at 5½%	\$ 3,220.07

We adjusted net income by disallowing a net operating loss of \$32,883.74.

In the application the taxpayer is asking that a separate accounting basis be used in computing the tax.

The taxpayer was incorporated in Illinois on November 20, 1951 and became subject to our franchise tax in 1961. The taxpayer was engaged in the wholesale paper business in New York City under the name of Butler Overseas Corporation. On December 29, 1961 it merged Ginger Basin Company, an Illinois company engaged in the real estate development business in Illinois. After the merger the name was changed to Oak Brook Development Company.

Attached to Form CT-7 is a schedule showing allocation of income and deductions between the "Paper Division" and the "Land Division." The schedule shows a net loss (before net operating loss deduction) of (\$45,449.06) for the "Paper Division" operated in New York and a profit of \$177,605.90 for the "Land Division" which operated exclusively in Illinois.

The taxpayer claims the Land Division operation in Illinois is wholly unrelated to the Paper Division

operation in New York and thus not a part of the unitary business carried on within New York State. Each division operates independently of each other; separate bank accounts and books of account were maintained; each division had its own employees.

The taxpayer is a 100% subsidiary of Butler Company, a non-taxpayer in New York State.

As the foregoing facts show, the two businesses of the taxpayer are separate ones, rather than a unitary one.

On November 9, 1964 Mr. Heckelman and Mr. Getz sent a memorandum to the State Tax Commission on the subject "Proposed allocation and apportionment rules and audit guides under Article 9-A in light of Sheraton Buildings, Inc. v. State Tax Commission." 15 AD 2d 142  
aff'd 13 NY 2d 802

The memorandum recommended in (5) that a taxpayer such as this one be permitted to allocate its income by separate accounting.

However, the State Tax Commission in a meeting held on February 10, 1965 did not approve recommendation number 5 and stated that such matters (separate accounting) be referred to the Tax Commission in the form of a determination.

My own thought in this matter is that in view of the Sheraton Buildings decision, the taxpayer should be permitted to compute its tax for 1962 on a separate accounting basis.

However, since I am not sure that the Tax Commission will permit a separate accounting basis under any circumstances, I hesitate to draft a determination permitting it.

Under the circumstances, shall we send the file to the Tax Commission for review and further advice as to its position on the issue involved.

*W. F. Sullivan*  
W. F. Sullivan  
Sr. Tax Administrative Supervisor

WFS:MB

*Bill  
In view of this  
I believe we  
should submit  
to the Commission  
in the form of a  
determination.  
EAG  
11/16/65*